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PROCEDURE INSTRUCTION LETTER NO. I06-III-02


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SUBJECT: Procedures for Implementation of the New Minimum Civil Penalties
Required by the MINER Act

Scope

This procedure instruction letter applies to all Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health enforcement personnel and Assessments personnel involved in the special assessment process.

Purpose

The purpose of this instruction letter is to establish immediate procedures to ensure that citations and orders issued after June 16, 2006, are assessed in accordance with the Mine Improvement and New Emergency Response Act (MINER Act) provisions. The MSHA Standardized Information System (MSIS) is not currently programmed to process these citations and orders in accordance with the provisions of the MINER Act. Therefore, interim manual procedures are necessary.

Procedure Instructions

Enforcement program areas - Submit all citations and orders issued under Section 104(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) to the Assessment Center in Wilkes-Barre, Pennsylvania. Continue to include a Special Assessment Review Form (SAR) indicating whether or not special assessment is being recommended.

Enforcement program areas - Review all citations for violations of 30 Code of Federal Regulations (30 CFR) Part 50.10 to determine the type of accident involved. Submit all such citations issued for failure to immediately report a death of an individual at a mine, or an injury to or entrapment of an individual at a mine which has reasonable potential to cause death, to the Assessment Center in Wilkes-Barre, Pennsylvania. Special assessment is mandatory for these citations.

Assessment Center – Process all of these citations and orders as special assessments.

Headquarters Assessments - Ensure that the penalties assessed for these citations and orders are in accordance with the new minimum civil penalty provisions in the MINER Act.

Background

The MINER Act imposes a minimum civil penalty assessment of \$2,000 for citations and orders issued under Section 104(d)(1) of the Mine Act and a minimum assessment of \$4,000 for orders issued under Section 104(d)(2) of the Mine Act. Until the necessary changes can be made to the MSIS program that calculates regular assessments, all violations cited under Section 104(d) of the Mine Act must be processed manually to ensure that the minimum penalties are assessed.

The MINER Act also imposes a minimum civil penalty of \$5,000 for a mine operator's failure to notify MSHA within 15 minutes of a death of an individual at a mine, or an injury to or entrapment of an individual at a mine which has a reasonable potential to cause death. These violations are cited under 30 CFR 50.10. However, failure to notify MSHA of several other types of accidents is also cited under 30 CFR 50.10, and those citations are not subject to the \$5,000 minimum penalty assessment. As there is currently no way for MSIS to determine whether a violation of 30 CFR 50.10 is, or is not, subject to the minimum penalty, all violations of 30 CFR 50.10 will need to be manually reviewed by the Enforcement program areas. Those violations of 30 CFR 50.10 involving accidents as defined above will need to be processed as special assessments in order to ensure that the minimum penalty is assessed.

A third provision of the MINER Act, which provides for a civil penalty of up to \$220,000 for "flagrant" violations, will be addressed in a separate Procedure Instruction Letter.

Authority

Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006

Filing Instructions

This procedure instruction letter should be filed behind the tab marked "Procedure Instruction Letters" in the binder for Program Policy Handbooks and Procedure Instruction Letters.

Issuing Office and Contact Persons

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